



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Spengler Kranarbeiten GmbH

File: B-234840

Date: April 12, 1989

DIGEST

While the General Accounting Office will consider protests against the rejection of a proposal because of a proposed debarment to ensure the proposed debarment was not arbitrarily issued to avoid making award or to ensure minimum standards of due process have been met, neither circumstance is involved here.

DECISION

Spengler Kranarbeiten GmbH protests the rejection of its proposal and the award of a contract to another firm under request for proposals (RFP) No. DAJA37-88-R-0220, issued by the Department of the Army. We dismiss the protest.

By letter dated February 7, 1989, issued while the subject procurement was pending, the Army advised Spengler that the firm was being proposed for debarment by the Army as an affiliate of a debarred contractor, Klaus Spengler. In addition, the letter stated that pending the debarment decision, the Department of Defense would not solicit offers from, award contracts to, renew or extend existing contracts with, or consent to subcontracts with debarred contractors, unless the acquiring agency head determines in writing that there is a compelling reason to do so. As a result of this action, award was made to another offeror, Crown Gabelstapler GmbH, on February 24.

Spengler contends that the proposed debarment did not render it ineligible for award because there is no "legal or commercial" relationship between Klaus Spengler and the protester. Thus, the protester maintains the contracting officer improperly eliminated the firm from the competition.

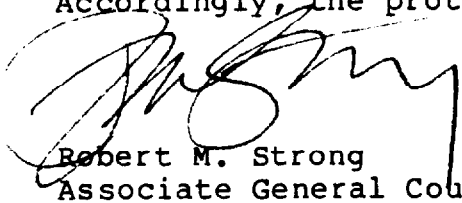
However, where, as here, a firm is proposed for debarment, an agency may not make any award to that firm, pending the debarment decision, unless the agency makes a determination

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that there is a compelling reason to do so, which has not been alleged here. Federal Acquisition Regulation (FAR) § 9.406-2(c)(7) (FAC 84-12); Department of Defense FAR Supplement § 9.406-1(7a) (DAC 86-7). Generally, we have upheld decisions not to award contracts to firms proposed for debarment. D.E.W., Inc., B-232460, Oct. 19, 1988, 88-2 CPD ¶ 372; Ben M. White Co., B-230033, May 19, 1988, 88-1 CPD ¶ 476.

Spengler's complaint is that it is not affiliated with Klaus Spengler and thus should not be debarred. Our Office will consider protests of proposed debarment actions to ensure that the agency has not acted arbitrarily to avoid making award to the offeror otherwise entitled to award, see N.W. Ayer, Inc., B-225632, Jan. 16, 1987, 87-1 CPD ¶ 68 and Spectrum Enterprises, B-221202, Dec. 31, 1985, 86-1 CPD ¶ 5, or whether minimum standards of due process have been met. S.A.F.E. Export Corp., 65 Comp. Gen. 530, (1986), 86-1 CPD ¶ 413, aff'd, B-222308.2, et al., July 8, 1986, 86-2 CPD ¶ 44. Since Spengler has not alleged either circumstance here, this matter is not appropriate for our review, but is subject to the debarment procedures.

Accordingly, the protest is dismissed.



Robert M. Strong
Associate General Counsel